

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

CHAD RAYNARD SHORE,)	
)	
Petitioner,)	
)	
v.)	1:07CV787
)	1:05CR208-1
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

On April 11, 2008, the United States Magistrate Judge's Recommendation was filed and notice was served on the parties pursuant to 28 U.S.C. § 636. Petitioner filed objections to the Recommendation within the time limit prescribed by Section 636 (Doc. 42).

The court has made a de novo determination of those portions of the Recommendation to which objections have been made and finds that they do not change the substance of the United States Magistrate Judge's rulings, which are affirmed and adopted. As stated in the Recommendation, Petitioner cannot obtain relief under 18 U.S.C. § 3582(c)(2), which applies where, following sentencing, a sentencing range has "subsequently been lowered." Because Amendment 599, upon which Petitioner relies for a reduction in his sentence, was adopted by the United States Sentencing Commission some six years *before* his sentencing in 2006, 18 U.S.C. § 3582(c)(2) does not apply. See, e.g., United States v. Goines, 357 F.3d 469 (4th Cir. 2004). Petitioner's claim in his objection that "[a]lthough Amendment 599 was applicable in 2000 as of 1 Nov.

[20]00, it was not until 2004 that its interpretation as to the lower courts for its primary purpose occurred," ostensibly referring to the Fourth Circuit's decision in Goines, does not save his claim under 18 U.S.C. § 3582(c)(2). Moreover, this was still two years *before* Petitioner's sentencing. Petitioner's motion is in reality a collateral attack on his sentence, which Petitioner expressly eschews. (Doc. 42 at 3, 5 (stating the Petitioner "does not want this [motion] construed as a 2255 motion").) At Petitioner's insistence, the court therefore refrains from treating his motion as such.

IT IS THEREFORE ORDERED that Petitioner's motion for sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) (Doc. 33) is DENIED, that this action is dismissed, and that finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is denied.

/s/ Thomas D. Schroeder
United States District Judge

August 19, 2008